IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11590 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDAN METAL PVT.LTD.

Versus

DY.COMMISSIONER OF LABOUR & APPELLATE AUTHORITY

Appearance:

MR KIRAN C RAVAL for Petitioner

MR IM PANDYA, AGP for Respondent No. 1

MR HARESH J TRIVEDI for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/03/2001

ORAL JUDGEMENT

#. This petition was admitted on 13-12-2000. Notice was issued. Respondents were served with the notice. Shri IM Pandya, learned AGP appears for the respondent no.1. None appeared for the petitioner, so also for the

respondent no.2 though Shri Haresh J.Trivedi is shown in the cause-title as appearing for the respondent no.2.

#. Learned AGP Shri IM Pandya has been heard and the impugned order has been examined, so also the averments made in the petition.

#. The prayer in the writ petition is for quashing the order dated 11-10-2000 passed by the appellate Authority, Deputy Commissioner of Labour, Vadodara, under Payment of Gratuity Act, 1972.

#. No counter affidavit has been filed by the respondent no.1.

#. The brief allegations in the petition are that the petitioner is a registered company under the Companies Act. The petitioner Factory was closed down with effect from 2-5-2000 after following due procedure of law. The respondent no.2 was in the employment of the petitioner Company in the management cadre of Senior Officer - 01 and was working as Sales Coordinator. Clause-15 of the terms and conditions of appointment provided that the services will be terminable by one month's notice in writing on either side or by payment of one month's salary in lieu of notice by either party. In accordance with this clause, services of the respondent no.2 were terminated on 8-2-2000 on payment of one month's notice pay in lieu of notice and was relieved from services on 8-2-2000. Since the respondent no.2 joined the factory of the petitioner on 2-5-1995, he had put in total service of 4 years, 9 months and 6 days.

#. The respondent no.2 moved an application for gratuity in Form-N. This application was rejected by the controlling Authority, namely, Assistant Commissioner of Labour on 9-6-2000, observing that the respondent no.2 is not entitled to receive gratuity as per Sec.4 of the Payment of Gratuity Act, 1972, inasmuch as, he did not put in 5 years' continuous service. Annexure-'B' is the order of the controlling Authority passed on 9-6-2000.

#. Feeling aggrieved, the respondent no.2 preferred an appeal against the order of the controlling Authority, which was allowed on 11-10-2000. Feeling aggrieved from this order, the Company has preferred this petition.

#. The short point for consideration is, whether the respondent no.2 is entitled to gratuity on the facts established on record. It has not been controverted through any counter affidavit that the respondent no.2

had put in only 4 years and 9 months' service with the petitioner. Thus, he has not completed 5 years' continuous service with the petitioner.

#. Sec.4(1) of Payment of Gratuity Act provides that,

'Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years ---

(a) on his superannuation;

(b) on his retirement or resignation;

(c) on his death or disablement due to accident or disease'.

It is not the case of superannuation or retirement or death of the respondent no.2. On the other hand, it is a case where the respondent no.2's services were terminated by the employer, after he has completed 4 years and 9 months' service. In that view of the matter, the respondent no.2 did not render continuous service for less than 5 years. This provision was correctly interpreted by the controlling Authority, whereas interpretation given by the appellate Authority is neither in consonance with clear provision of Sec.4(1) of the Payment of Gratuity Act, nor any authority has been cited by the appellate Authority in support of his view that, eventhough the petitioner rendered only 4 years and 9 months' service, he has put in continuous service of not less than 5 years. In that view of the matter, the order of the appellate Authority is patently illegal and contrary to the provision of Sec.4(1) of the Payment of Gratuity Act, 1972.

##. In view of the above discussion, the petition succeeds and is hereby allowed. The order dated 11-10-2000 of the appellate Authority as contained in Annexure-'C' is hereby quashed and set-aside, whereas the order of the controlling Authority dated 9-6-2000 vide Annexure-'B' is restored. No order as to cost.

March 15, 2001. [D.C. Srivastava, J.]

/sakkaf